TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~323~~ 1214

JOHN H. HARRINGTON, CLAIMANT OF ONE HUNDRED AND TWENTY-FOUR BARRELS OF DISTILLED SPIRITS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED DECEMBER 6, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 323.

JOHN H. HARRINGTON, CLAIMANT OF ONE HUNDRED AND TWENTY-FOUR BARRELS OF DISTILLED SPIRITS, PLAINTIFF IN ERROR,

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INDEX.

	Original.	Print.
Writ of error to circuit court	3	1
Return of judges of circuit court	4	1
Record of circuit court commences at	5	1
Writ of error to district court	7	2
Return of judge of district court	8	2
Record of district court commences at	9	3
Information	9	3
Warrant and monition	14	6
Stipulation for costs and expenses by Harrington	15	6
Claim of Harrington	15	6
Boyden	16	7
Stipulation for costs and expenses by Boyden	16	7
to the action by Harrington	17	8
Warrant to deliver one hundred and twenty-four barrels	18	8
Stipulation to the action by Boyden	19	9
Warrant to deliver ninety barrels	19	9
Plea and issue—Harrington	20	9
Boyden	21	10
Amendment to information	21	10
Verdict of jury	22	11
Bill of exceptions	22	11
Judgment of district court	26	13
Certificate of clerk of district court	27	14
Judgment of circuit court	29	14
Certificate of clerk of circuit court	30	14
Bond on writ of error to district court	31	14
circuit court	33	15
Citation and acknowledgment of service	36	16

3 UNITED STATES, *ss:*

[SEAL.] The President of the United States to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

Because, that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, entitled "278 Barrels Distilled Spirits, John H. Harrington, claimant of 124 barrels, plaintiff in error, v. The United States, defendant in error," a manifest error has intervened to the great damage of the said John H. Harrington, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seat of the national government, that, the record and proofs aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Salmon P. Chase, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this 20th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety fourth.

JOHN G. STETSON, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. Court U. S.

4 UNITED STATES OF AMERICA,
Circuit Court of the United States, Massachusetts District, ss:

And now here the judges of the circuit court of the United States within and for said district make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof I, John G. Stetson, clerk of said circuit court, have hereunto set my hand and affixed the seal of said court this twentieth day of November, A. D. 1869.

[SEAL.] JOHN G. STETSON, *Clerk.*

5 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, before the Honorable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge.

6 TWO HUNDRED AND SEVENTY-EIGHT Barrels Distilled Spirits—John H. Harrington, claimant of one hundred and twenty-four barrels, plaintiff in error,
v.
THE UNITED STATES, DEFENDANTS IN ERROR.

Upon the complaint of John H. Harrington a writ of error was issued in the words following, namely:

7 UNITED STATES, *ss:*

(SEAL OF THE CIRCUIT COURT, MASSACHUSETTS.) The President of the United States to the judge of the district court holden in and for the district of Massachusetts, greeting:

Because, that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, [between] entitled "The United States, by information, versus 278 Barrels of Distilled Spirits, Joseph A. Boyden, claimant of 154 barrels, John H. Harrington, under the name of Boyden and Company, claimant of the remaining 124 barrels, defendant," [in a plea of] a manifest error has intervened to the great damage of the said John H. Harrington, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the circuit court of the United States, to be holden at Boston, in said district, on the fifteenth day of October next, at ten o'clock a. m., that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Salmon P. Chase, esquire, Chief Justice of the said Supreme Court of the U. S., at [Washington] Boston aforesaid, this twelfth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

JOHN G. STETSON, *Clerk.*

Allowed by—

JOHN LOWELL, *Judge.*

8 Whereupon the following return was made, namely:

DISTRICT COURT OF THE UNITED STATES,
Massachusetts District, ss:

And now here the judge of the district court of the United States in and for said district makes return of this writ by annexing hereto and returning herewith, under the seal of the said district court, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof I, S. E. Sprague, clerk of said district court, have hereunto set my hand and affixed the seal of said court this second day of October, A. D. 1868.

(SEAL OF THE DISTRICT COURT, MASSACHUSETTTS.)

S. E. SPRAGUE, *Clerk.*

9 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the fourth Tuesday (being the twenty-third day) of June, in the year of our Lord one thousand eight hundred and sixty-eight, before the Honorable John Lowell, judge.

THE UNITED STATES OF AMERICA, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS Distilled Spirits.

This information was filed in court on the 15th day of May, A. D. 1867, and is as follows, viz:

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

THE UNITED STATES, BY INFORMATION,
versus
TWO HUNDRED AND SEVENTY-EIGHT BARRELS Distilled Spirits.

To the Honorable John Lowell, judge of the district court of the United States for the district of Massachusetts:

Be it remembered that, on this fourteenth day of May, in the year of Lord one thousand eight hundred and sixty-seven, before the Honorable John Lowell, judge as aforesaid, comes in his own proper person George Stillman Hillard, esquire, attorney of the said United States in
10 and for said district of Massachusetts, who prosecutes for the said United States in this behalf, and, in the name and behalf of the United States of America, propounds and gives the said judge to understand and be informed that at a time past, to wit, on the twenty-seventh day of April, in the year aforesaid, William H. McCartney, then and now collector of the internal revenue for the third revenue district in said district of Massachusetts, did, at said Boston, in said district of Massachusetts, and on land, seize as forfeited to the use of the said United States of America the goods, wares, and merchandise following, that is to say:

Two hundred and seventy-eight barrels of distilled spirits, found in the store and building occupied by Boyden and Company, and numbered forty-nine on India street, in said city of Boston.

For that the goods, wares, and merchandise so seized as aforesaid are distilled spirits, and were manufactured within the United States of America since the first day of January, in the year of our Lord one thousand eight hundred and sixty-five, on which, on being manufactured as aforesaid, a tax now is and, at all times since said first day of January, in the year of our Lord eighteen hundred and sixty-five, has been, imposed by the provisions of the laws of the United States of America, to wit, of the laws relating to internal revenue; and said distilled spirits were then, to wit, on said twenty-seventh day of April, found elsewhere than in a bonded warehouse, to wit, in said store and building then occupied by said Boyden and Company, and numbered forty-nine on said India street, which said store and building was not then a bonded warehouse, and said distilled spirits had not then and there been removed from any

bonded warehouse according to law, and the tax imposed by law as aforesaid on said spirits had not, nor had any part thereof, been then and there paid, against the form of the statutes in such case made and provided; whereby, and by force of the premises, and of the statutes in such case made and provided, the said goods, wares, and merchandise seized as aforesaid are forfeited to the United States of America.

And also for that the said goods, wares, and merchandise so seized as aforesaid are distilled spirits, and were manufactured within the United States of America since the first day of January, in the year of our Lord eighteen hundred and sixty-five, on which, on being manu-
11 factured as aforesaid, a tax now is and, at all times since said first day of January, in the year of our Lord eighteen hundred and sixty-five, has been imposed by the provisions of the laws of the United States, to wit, of the laws relating to internal revenue, and said goods, wares, and merchandise, to wit, said two hundred and seventy-eight barrels of distilled spirits, was then, to wit, on said twenty-seventh day of April, found in the possession and custody and within the control of one John H. Harrington, in a building numbered forty-nine on India street, in said city of Boston, said Harrington then and there doing business under the style of Boyden and Company, for the purpose then and there of being sold and removed by said Harrington in fraud of the internal revenue laws, and with the design then and there of said Harrington to avoid payment of said taxes so imposed as aforesaid upon said spirits, the said taxes then and there not having been paid, against the form of the statutes in such case made and provided; whereby, and by force of the premises and of the statues in such case made and provided, the said goods, wares, and merchandise so seized as aforesaid became forfeited to the United States of America.

And also for that the said goods, wares, and merchandise so seized as aforesaid are distilled spirits, and were manufactured within the United States of America since the first day of January, in the year of our Lord eighteen hundred and sixty-five, on which, on being manufactured as aforesaid, a tax now is and, at all times since said first day of January, in the year of our Lord eighteen hundred and sixty-five, has been imposed by the provisions of the laws of the United States, to wit, of the laws relating to internal revenue, and said goods, wares, and merchandise, to wit, said two hundred and seventy-eight barrels of distilled spirits, were then, to wit, on said twenty-seventh day of April, found in the possession and custody and within the control of one Joseph A. Boyden, in a building numbered forty-nine on India street, in said city of Boston, for the purpose then and there of being sold and removed by said Boyden in fraud of the internal revenue laws, and with the design then and there of said Boyden to avoid payment of said taxes so imposed as aforesaid upon said spirits, the said taxes then and there not having been paid, against the form of the statutes in such case made and provided; whereby, and by force of the premises and of the statutes in such case made and provided, the said goods, wares, and
12 merchandise so seized as aforesaid became forfeited to the United States of America.

And also for that the said goods, wares, and merchandise so seized as aforesaid are distilled spirits, and were manufactured within the United States of America since the first day of January, in the year of our Lord eighteen hundred and sixty-five, on which, on being manufactured as aforesaid, a tax now is and, at all times since said first day of January, in the year of our Lord eighteen hundred and sixty-five, has been imposed by the provisions of the laws of the United States, to wit, of the laws relating to internal revenue, and said goods, wares, and

merchandise, to wit, said two hundred and seventy-eight barrels of distilled spirits, were then, to wit, on said twenty-seventh day of April, found in the possession and custody and within the control of some person whose name is to your informant unknown, in a building numbered forty-nine on India street, in said city of Boston, for the purpose then and there of being sold and removed by some person whose name is to your informant unknown, in fraud of the internal revenue laws, and with the design then and there to avoid payment of said taxes, so imposed as aforesaid upon said spirits, the said taxes then and there not having been paid, against the form of the statutes in such case made and provided; whereby, and by force of the premises and of the statutes in such case made and provided, the said goods, wares, and merchandise so seized as aforesaid became forfeited to the United States of America.

And also for that said goods, wares, and merchandise so seized as aforesaid are distilled spirits, and were manufactured within the United States since the first day of January, in the year of our Lord eighteen hundred and sixty-five, on which, on being manufactured as aforesaid, a tax now is and, at all times since said first day of January, in the year of our Lord eighteen hundred and sixty-five, has been imposed by the provisions of the laws of the United States of America, to wit, of the laws relating to internal revenue, which tax is a tax of two dollars upon each and every proof gallon of said spirits, and has not been paid according to law, but said tax remains wholly unpaid, and said distilled spirits so seized as aforesaid were then and there found in said store and building, numbered forty-nine on India street, which said store and building was not then and there either a bonded ware-
13 house or a distillery, but said distilled spirits had been theretofore removed to said store and building from a bonded warehouse for the purpose of being sold and consumed, and said distilled spirits did then and there amount to a large number of proof gallons, to wit, to twenty-two thousand two hundred and forty proof gallons of distilled spirits, and a tax, according to law, heretofore has been assessed upon the said spirits, which said tax so assessed amounts to a large sum, to wit, to the sum of forty-four thousand four hundred and eighty dollars, all which said tax is a lien upon said distilled spirits, against the form of the statutes in such case made and provided; wherefore your informant prays that the amount of the taxes legally due on account of said distilled spirits may be determined, and the said taxes be declared a lien on said distilled spirits, and the said spirits may be ordered to be sold, and the proceeds be applied in payment of said taxes so declared to be a lien, and that the court may make such further orders and decrees as to right and justice may appertain.

And the said attorney of the United States, on behalf of the said United States, saith that all and singular the premises aforesaid are true; wherefore the said attorney prays the advisement of the said judge in this behalf, and that any and all person or persons be cited in general and special to answer the premises, to the end that the said goods, wares, and merchandise so seized as aforesaid be condemned by the definitive sentence and decree of said judge, as forfeited to the use of the said United States, and that the proceeds thereof, after condemnation, be distributed in manner and form as provided in and by the statutes of the said United States, or that said goods, wares, and merchandise may be ordered to be sold, and the proceeds applied to the payment of the taxes adjudged to be a lien.

G. S. HILLIARD,
United States Attorney for the District of Massachusetts.

14 *Warrant and monition.*

Thereupon, on said fifteenth day of May, A. D. 1867, by order of the judge, a warrant and monition issued, commanding the marshal to give notice to all persons concerned that the foregoing information had been filed, and that trial would be had thereon at a district court, to be holden at the United States court-house in Boston, in said district of Massachusetts, on Tuesday, the fourth day of June, 1867, at ten o'clock a. m.; and to give said notice by advertising the same in the Boston Daily Advertiser, one of the public newspapers printed at Boston, and by posting a copy of the same notice at the said court-house in Boston fourteen days at least before said day of trial; and to take the said two hundred and seventy-eight barrels spirits into his custody, and to make due return of his doings.

The marshal made return thereon as follows, viz:

BOSTON, *May* 27, 1867.

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

Pursuant hereunto, I have given notice to all persons concerned that the information within named has been filed, and that trial will be had thereon on the fourth day of June next, by advertising the substance of the within monition in the Boston Daily Advertiser, one of the newspapers printed at Boston, in said district, and by posting up a copy of the same notice in the United States court-house in Boston, in said district, fourteen days before the day within named for trial; and on the seventeenth day of said May I took the within-named two hundred seventy-eight (278) barrels of distilled spirits into my custody on this warrant.

GEO. L. ANDREWS,
U. S. Marshal.

15 *Stipulation for costs and expenses by J. H. Harrington.*

On the fifteenth day of June, in the year of our Lord 1867, before this court personally appeared J. H. Harrington, of Boston, in the district of Massachusetts, claimant of said spirits, for himself, and also as agent or attorney of Joseph A. Boyden, and produced for surety Jonathan Harrington, of North Chelsea.

And the said J. H. and Jonathan, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of four hundred dollars, unto the said United States that the said J. H. Harrington, the claimant, should pay all costs and expenses which should be awarded against him in this suit upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

On the fifteenth day of June, A. D. 1867, the following claim was filed in the clerk's office by J. H. Harrington to one hundred and twenty-four barrels, viz:

District court of the United States, Massachusetts district.

UNITED STATES, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS Distilled Spirits.

And now comes before said court John H. Harrington, of Boston, in said district, doing business in said Boston under the firm of Boyden &

Co., and claims one hundred and twenty-four of the said two hundred and seventy-eight barrels of distilled spirits proceeded against in said information, and respectfully represents that he, said Harrington, is the true and bona-fide owner of the said one hundred and seventy-eight barrels, and that no other person is the owner thereof.

BOYDEN & CO.,
By J. H. HARRINGTON.

R. M. MORSE., JR., *Claimant's Attorney.*
JUNE 15TH, 1866.

Sworn to before me.

S. E. SPRAGUE, *Clerk.*

16 On the fifteenth day of June, A. D. 1867, the following claim was filed in the clerk's office by J. A. Boyden to one hundred and fifty-four barrels, viz:

District court of the United States, Massachusetts district.

UNITED STATES, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS
Distilled Spirits.

And now comes before said court John H. Harrington, of Boston, in said district, and in behalf of Joseph A. Boyden, of said Boston, claims one hundred and fifty-four of the said two hundred and seventy-eight barrels of distilled spirits proceeded against in said information, and respectfully represents that he, said Boyden, is the true and bona-fide owner of the said one hundred and fifty-four barrels, and that no other person is the owner thereof.

JOS. A. BOYDEN,
By J. H. HARRINGTON.

R. M. MORSE, JR., *Claimant's Attorney.*
JUNE 15TH, 1867.

Sworn to before me.

S. E. SPRAGUE, *Clerk.*

Stipulation for costs and expenses by Jos. A. Boyden.

On the seventeenth day of April, A. D. 1868, before this court personally appeared Joseph A. Boyden, of Boston, in the district of Massachusetts, claimant of one hundred and fifty-four barrels of said spirits, and produced for sureties Eben Boyden, of Billerica, and John H. Harrington, of Boston.

And the said Joseph A., Eben, and John H., submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of two hundred dollars, unto the said United States, that the said Joseph A. Boyden should pay all costs and expenses which should be awarded against him
17 in this suit upon the final adjudication thereof, or by any interlocutory order, whether it be in this or any appellate court.

This information was entered at the March term, A. D. 1867, of this court, and thence was continued from term to term to the March term,

A. D. 1868, when, on the seventeenth day of April, A. D. 1868, the following agreements as to value of spirits were filed in court, viz:

UNITED STATES
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS.

It is agreed that the value of the one hundred and twenty-four barrels of spirits withdrawn by John H. Harrington is $9,054 72.

April 17, 1868.

W. A. FIELD,
Assistant United States Attorney.
R. M. MORSE, JR.,
Counsel for John H. Harrington.

It is agreed that the value of the ninety barrels of spirits withdrawn by Joseph A. Boyden is eight thousand eight hundred and thirty-one dollars.

April 17, 1868.

W. A. FIELD,
Ass't U. S. Attorney.
R. M. MORSE, JR.,
Counsel for Joseph A. Boyden.

Stipulation to the action by J. H. Harrington.

On the seventeenth day of April, A. D. 1868, before this court personally appeared John H. Harrington, of Boston, in the district of Massachusetts, claimants of one hundred and twenty-four barrels of said liquors, and produced for sureties Eben Boyden, of Billerica, Insley G. Jones, of Medford, Benjamin F. Young, of Somerville, all in said district; and the said John H., Eben, Insley G., and Benjamin F., submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the
18 sum of nine thousand and fifty-four dollars and seventy-two cents, unto the said United States, that the said Harrington should abide by all orders and decrees, interlocutory or final, of the court, and should pay the amount of the final decree of the court, and all sums of money that he should be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

Warrant to deliver one hundred and twenty-four barrels.

Thereupon, on said seventeenth day of April, A. D. 1868, by order of the judge, a warrant issued directing the marshal to cause said one hundred and twenty-four barrels spirits to be delivered to the claimant aforesaid, stipulation having been duly given therefor, upon which the marshal made return as follows, viz:

BOSTON, *April* 21, 1868.

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

Pursuant to the within precept, I have caused the within-named one hundred and twenty-four barrels distilled spirits to be delivered to the claimant within named, and have taken his receipt for the same as under.

J. B. KEYES,
Deputy Marshal.

APRIL 21, 1868.

Received from George L. Andrews, marshal in and for the district of Massachusetts, the within-named one hundred and twenty-four barrels spirits, in the same state as when seized and detained by him.

J. H. HARRINGTON.

19 *Stipulation to the action by Joseph A. Boyden.*

On the seventeenth day of April, A. D. 1868, before this court personally appeared Joseph A. Boyden, of Boston, in the district of Massachusetts, claimant of one hundred and fifty-four barrels of said spirits, and produced for sureties Eben Boyden, of Billerica, in said district, and Insley G. Jones, of Medford, in said district, and Benjamin F. Young, of Somerville, in said district.

And the said Joseph A., Eben, Insley G., and Benjamin F., submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of eighty-eight hundred and thirty-one dollars, unto the said United States, that the said Joseph A. Boyden, the claimant, should abide by all orders and decrees, interlocutory or final, of the court, and should pay the amount of the final decree of the court, and all sums of money that he should be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

Warrant to deliver ninety barrels distilled spirits.

Thereupon, on said seventeenth day of April, A. D. 1868, by order of the judge, a warrant issued directing the marshal to cause said ninety barrels distilled spirits to be delivered to the claimant aforesaid, he having duly stipulated therefor, upon which the marshal made return as follows, viz:

BOSTON, *April* 18, 1868.

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

Pursuant to the within precept, I have caused the within ninety barrels spirits to be delivered to the claimant within named, and have taken his receipt for the same as under.

J. B. KEYES,
Deputy Marshal.

20 APRIL 18, 1868.

Received from George L. Andrews, marshal in and for the district of Massachusetts, the within-named ninety barrels of distilled spirits, in the same state as when seized and detained by him.

J. A. BOYDEN.

From said March term this information was continued to June term, A. D. 1868, when, on twenty-ninth day of said June, the following plea of J. H. Harrington was filed in court, viz:

District court of United States, Massachusetts district.

UNITED STATES, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS Distilled Spirits.

And now comes John H. Harrington, claimant of one hundred and

twenty-four of said two hundred and seventy-eight of said barrels of distilled spirits, not confessing any of the matters and things in said information alleged, and, saving and reserving unto himself all benefit and advantage of exception that can or may be had or taken to the errors and insufficiences in such information contained, for plea says that the said goods, wares, and merchandise in said information mentioned and described did not, nor did any part thereof, become forfeited to the United States in manner and in form as in said information is alleged; and that all the allegations in said information and in the several counts thereof contained, whereby said goods are alleged and claimed to have become forfeited to the United States, are not true.

And of this he puts himself on the country.

J. H. HARRINGTON,
By R. M. MORSE, JR., *his Att'y.*

And the United States do the like.

W. A. FIELD,
Assistant United States Attorney.

21 On the twenty-ninth day of June, A. D. 1868, the following plea of Joseph A. Boyden was filed in court, viz:

District court of United States, Massachusetts district.

UNITED STATES, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS Distilled Spirits.

And now comes Joseph A. Boyden, claimant of one hundred and fifty-four of said two hundred and seventy-eight barrels of distilled spirits, not confessing any of the matters and things in said information alleged, and, saving and reserving unto himself all benefit and advantage by exception that can or may be had or taken to the errors and insufficiencies in such information contained, for plea says that the said goods, wares, and merchandise in said information mentioned and described did not, nor did any part thereof, become forfeited to the United States in manner and in form as in said information is alleged; and that all the allegations in said information and in the several counts thereof contained, whereby said goods are alleged and claimed to have become forfeited to the United States, are not true.

And for proof thereof puts himself on the country.

J. A. BOYDEN,
By R. M. MORSE, JR.,
His Attorney.

And the United States do the like.

W. A. FIELD,
Assistant United States Attorney.

On the first day of July, A. D. 1868, the following amendment to information was filed in court and allowed, viz:

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

THE UNITED STATES, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS Distilled Spirits—Boyden & Harrington, claimants.

The United States ask leave to discontinue as to the fourth and fifth

counts on said information, and that each of the first three counts
22 be amended by striking out the following words, to wit: "Since the first day of January, in the year of our Lord one thousand eight hundred and sixty five," the first time they occur in each of said counts.

W. A. FIELD,
Assistant United States Attorney.

JUNE 30, 1868.

Issue having been joined as aforesaid, the cause, after a full hearing, was committed to a jury sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath say that the goods, wares, and merchandise informed against and claimed by Harrington are forfeited to the United States in manner and form as is alleged in said information, excepting seventy-four barrels, re-inspected April 25, 1867, by Cleaves.

And the jury find that the goods, wares, and merchandise informed against and claimed by Boyden are forfeited to the United States in manner and form as is alleged in said information.

Upon the trial of the said cause, after the evidence was closed on both sides and before the issue was submitted to the jury, the claimants filed their bill of exceptions; which was sealed and allowed by the court, and is in words and figures following, namely:

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

June term, 1868.

THE UNITED STATES, BY INFORMATION,
vs.
TWO HUNDRED AND SEVENTY-EIGHT BARRELS of Distilled Spirits.

Joseph A. Boyden, claimant of one hundred and fifty-four barrels; John H. Harrington, under the name of Boyden & Co., claimant of the remaining one hundred and twenty-four barrels.

Be it remembered that, on the pleadings and issues that are a part of the record in this case, this cause came on for trial at the June term of said court, in the year of our Lord eighteen hundred and sixty-eight, before the Honorable John Lowell, judge of said court, and a jury. It
23 appeared in evidence, among other things, that in April, eighteen hundred and sixty-seven, several hundred barrels of domestic distilled spirits more in quantity than the spirits seized were withdrawn from United States bonded warehouses in Boston upon applications made in due form to the collector of the district within which the warehouses were situate for transportation to Eastport, Maine, for exportation thence, and, upon the acceptance of the bonds offered therefor. The bonds proved to be false and fraudulent.

The spirits were not transported or attempted to be transported to Eastport, but were removed for sale and consumption in Boston and vicinity, in Massachusetts, and the taxes were not paid on these spirits.

The spirits proceeded against in this suit were seized in April, eighteen hundred and sixty-seven, in a building, No. 49 on India street, Boston, in the possession of Boyden and Harrington, which building was not a bonded warehouse of the United States.

It was contended by the government that the spirits informed against were a portion of the spirits removed upon these false and fraudulent bonds, and that the claimants were parties to the conspiracy by which the false and fraudulent bonds were procured to be executed and accepted, and the spirits removed for consumption and sale without payment of the taxes due on them, and the fraud on the government accomplished; that if any of the spirits seized should be found to be spirits made up of some of the spirits so fraudulently removed, mixed with other similar spirits, that the mixing was intentionally and fraudulently done by the claimants, with knowledge of the fraud, for the purpose of destroying the identity of the spirits and defrauding the United States of the tax; that Boyden and Harrington were connected in business and associated in this fraud. There was no evidence, except as to sixteen barrels marked Medford Rum, that any of the barrels of the spirits claimed by Boyden were made up of mixed lots of spirits, or had been put in the leaches, or had changed contents since they were received into his possession. It was also contended that all these spirits were, at the time of seizure, found in the said building, No. 49 on India street, in the possession of said Boyden and Harrington, for the purpose of being sold and removed by said Boyden and Harrington in fraud of the internal revenue laws, and with the design of each of them of avoiding the payment of the taxes upon the spirits.

24 It was contended by the claimants that part of the spirits in controversy were not a portion of the spirits so fraudulently withdrawn, but that some of them were different and distinct lots of spirits; that the spirits claimed by Harrington had been rectified in leaches, in which various lots of similar spirits, including possibly some of the spirits so fraudulently withdrawn, had been mixed, so that it was impossible to identify the spirits, after rectification, with any particular lot originally put into the leaches. The claimants also contended that they bought the spirits which were seized in open market, and without knowledge of any fraud. Harrington contended that such spirits of the lot so fraudulently withdrawn as he had bought, he bought through and by means of Boyden as his agent.

Evidence was introduced tending to prove the facts claimed both by the government and the claimants.

It was not controverted that the seizure was made before the expiration of the time allowed by the regulations of the Internal Revenue Department, and expressed in the bonds given for transportation for the completion of the transportation.

The claimants requested the court to instruct the jury, among other things, as follows:

1. That if the distilled spirits, which are the subject of controversy, had been deposited in a United States bonded warehouse, and had been removed therefrom upon application to the collector of the district in which they were situate, and by his authority, for rectification or transportation for exportation, they are not liable to forfeiture.

2. That if said spirits had been removed from a United States bonded warehouse, upon application to the collector of the district, and upon the furnishing of bonds which were satisfactory to and accepted by him, and upon permission thereupon granted by the collector, and were seized before the expiration of the time allowed for rectification or transportation, the spirits are not liable to forfeiture.

3. That if said spirits had been removed from a United States bonded warehouse according to the forms of law, viz, upon application made in due form to the collector for leave to withdraw, and upon bonds being

given in the prescribed form, and permission thereupon given in
25 due form for their removal, and said spirits had been bought by the claimants of the party withdrawing, or his agent, without knowledge of the fact that the bonds were worthless, or that said spirits were removed from the warehouse with intent to defraud the government, they are not liable to forfeiture.

4. That if a portion of the spirits proved in this case not to have paid a tax had passed through the rectifiers in which there were other spirits, and so become mixed with them, no portion of the spirits when rectified would be liable to forfeiture.

The court declined to give the first and second instructions prayed for.

The court gave the third instruction prayed for, with this qualification: that if Boyden bought the spirits as agent for Harrington, and Boyden was cognizant of the fraud, Harrington would be bound by his knowledge.

The court declined to give the fourth instruction prayed for, and instructed the jury that if the rectified spirits came from vats and rectifiers in which the spirits so fraudulently withdrawn, or any portion, were mixed with other lots of similar spirits of the claimant's, so that they could not be distinguished, the government were entitled to the forfeiture of a fair proportion of these spirits, although the mixture might have been innocently made, provided the jury were satisfied of such facts as would, under the instructions of the court, forfeit the spirits so fraudulently withdrawn if they had not been so mixed; and if the jury were satisfied of such facts, and also found that the spirits so fraudulently withdrawn were mixed with other similar spirits of the claimants by them fraudulently, with knowledge of the fraud committed, for the purpose of destroying the identity of the spirits and defrauding the government, and were so mixed that they could not be distinguished and identified, that the entire quantity of this mixture seized was forfeited to the United States.

The court gave other instructions, to which no exception was taken.

To the above rulings and refusals to rule the claimants, at the trial, took exceptions.

And inasmuch as the matters herein set forth do not appear by record, the same have been reduced to writing, and being found
26 to be correct, this bill of exceptions, at the request of the claimants, is allowed by the court, and signed and sealed by the judge thereof, and directed to be filed as of the seventh day of July, in the year of our Lord one thousand eight hundred and sixty-eight, before the jury left the bar.

[SEAL.] JOHN LOWELL, *Judge.*

It is agreed that the value of the lot of spirits forfeited by the verdict of the jury exceeded two thousand dollars in the case of each claimant.

W. A. FIELD,
Ass't U. S. Att'y.
R. M. MORSE, JR.,
Att'y for Claimants.

And now, on this seventh day of September, anno Domini one thousand eight hundred and sixty-eight, this cause having been committed to a jury, and the jury having found that the goods, wares, and merchandise informed against and claimed by Boyden are forfeited to the United States in manner and form as is alleged in said information; and that the goods, wares, and merchandise informed against, and claimed by Harrington, are forfeited to the United States in manner and form as is alleged in said information, excepting seventy-four barrels rein-

spected April 25th, 1867, by Cleaves, it is hereby considered by the court and adjudged that the one hundred and fifty-four barrels of distilled spirits claimed by Joseph A. Boyden are forfeited to the United States of America in manner and form as is alleged in said information; and it is also considered by the court and adjudged that of the one hundred and twenty-four barrels of distilled spirits claimed by John H. Harrington, under the name of Boyden & Company, fifty barrels of distilled spirits are forfeited to the United States of America in manner and form as is alleged in said information, and seventy-four barrels of distilled spirits are not forfeited to the United States of America in manner and form as is alleged in said information, and are to be restored to said claimant, John H. Harrington.

27 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, S. E. Sprague, clerk of the district court of the United States within and for the district of Massachusetts, hereby certify that the foregoing is a true copy of the record in the said cause.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court this second day of October, A. D. 1868.

28 S. E. SPRAGUE, *Clerk.*

29 This cause was duly entered here at the October term, A. D. 1868, when and where the parties appeared by their respective attorneys, and the cause came on to be heard and was argued by counsel. This cause was thence continued from term to term to this present term, when, to wit, October 15th, 1869, it is ordered, adjudged, and decreed by the court that the judgment and decree of the district court in this cause be, and the same is hereby, affirmed with costs; and that the said United States, defendants in error, recover against the said John H. Harrington, plaintiff in error, nineteen dollars and ninety cents for their costs herein expended.

A true record.

Attest: JOHN G. STETSON, *Clerk.*

30 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, John G. Stetson, clerk of the circuit court of the United States within and for the first circuit and district of Massachusetts, hereby certify that the foregoing is a true copy of the record and of all proceedings in said cause in said circuit court determined.

In testimony whereof I hereunto subscribe my name and affix the seal of said court this twentieth day of November, A. D. 1869.

[SEAL.] JOHN G. STETSON, *Clerk.*

31 *Bond on writ of error.*

Know all men by these presents that we, John H. Harrington, of Boston, in the district of Massachusetts, as principal, and Eben Boyden, of Billerica, Insley G. Jones, of Medford, & Benjamin F. Young, of Somerville, all in said district, as sureties, are held and firmly bound unto the United States of America in the full and just sum of nine thousand five hundred fifty-four dollars and seventy-two cents, to be paid to the said United States of America, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the twelfth day of September, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately, at a district court of the United States for the district of Massachusetts, in a suit depending in said court, entitled "The United States, by information, versus 287 Barrels of Distilled Spirits, Joseph A. Boyden, claimant of 154 barrels, John H. Harrington, under the name of Boyden and Company, claimant of the remaining 124 barrels," judgment was rendered against the said John H. Harrington, and the said John H. Harrington having procured a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear at a circuit court of the United States, to be holden at Boston, in said district of Massachusetts, on the fifteenth day of October next:

Now, the condition of the above obligation is such, that if the said John H. Harrington shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JOHN H. HARRINGTON. [L. S.]
EBEN BOYDEN. [L. S.]
INSLY G. JONES. [L. S.]
BENJAMIN F. YOUNG. [L. S.]

Signed, sealed, and delivered in presence of—
ISAAC M. CHADWICK, *to J. H. H.*
ALBERT R. RICHARDSON, *to E. B.*

Approved:

JOHN LOWELL, *Judge.*

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C. Mass. Dis.

32

33 *Bond on writ of error.*

Know all men by these presents that we, John H. Harrington, of Boston, in the district of Massachusetts, as principal, and Lemuel M. Brock, of Medford, in said district, as surety, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States of America, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States within and for the district of Massachusetts, in a suit depending in said court, entitled "278 Barrels Distilled Spirits, John H. Harrington, claimant of 124 barrels, plaintiff in error, v. The United States," judgment was rendered against the said John H. Harrington, and the said John H. Harrington having procured a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said United States of America, citing and admonishing them to be and appear at a Supreme Court of the United

States, to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John H. Harrington shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

J. H. HARRINGTON. [L. S.]
L. M. BROCK. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN G. STETSON.

Approved:

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

Approved 19 October, 1869.

JOHN C. ROPES,
Ass't U. S. Att'y.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk U. S. C. C. Mass. Dist.

34

35 THE UNITED STATES OF AMERICA:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, district of Massachusetts, wherein John H. Harrington, claimant of 124 barrels distilled spirits, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this 20th day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

Due, sufficient, and legal service of the foregoing citation is acknowledged in behalf of the United States.

JOHN C. ROPES,
Ass't U. S. Att'y.

(Indorsement on cover:) No. 323. John H. Harrington, claimant of 124 barrels of distilled spirits, plaintiff in error, vs. the United States. Massachusetts C. C. U. S.

Filed 6th December, 1869.